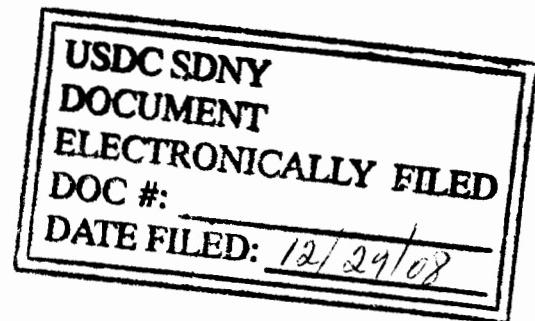


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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

----- x
CAPITAL MARKETS FINANCIAL SERVICES, INC., :
CLAREX LIMITED, and FISCELLA HOLDINGS :
LIMITED, :
Plaintiffs, : 06 CV 15301 (TPG)
: :
-against- :
: :
THE REPUBLIC OF ARGENTINA, :
Defendant. :
----- x

MOTION ORDER AND OPINION

Plaintiffs Clarex Limited (“Clarex”) and Fiscella Holdings Limited (“Fiscella”) are the beneficial owners of certain bond indebtedness issued by defendant, the Republic of Argentina (the “Republic”). Clarex and Fiscella have appointed Capital Markets Financial Services, Inc. (“CMFS”; together with Clarex and Fiscella, “Plaintiffs”) as their agent with respect to such bonds. The Republic defaulted on such indebtedness in December 2001 during a profound fiscal crisis. Plaintiffs are suing to recover amounts due to them as a result of the default and have moved for summary judgment.

The motion is granted.

FACTS

The bond indebtedness at issue is governed by (i) the US Discount Bond and Par Bond Fiscal Agency Agreement dated as of December 6, 1992 (the “Par Bonds FAA”) with the accompanying Form of Discount Bond and Par Bond dated as of December 6, 1992 (the “Par Bonds Form”); (ii) the Floating Rate Bond Exchange Agreement dated as of December 6, 1992 (the “FRB Agreement”) with the accompanying “Form of Bearer Floating Rate Bond” dated as of December 6, 1992 (the “FRB Form”); (iii) the Fiscal Agency Agreement dated as of December 10, 1993 (the “1993 FAA”) with the accompanying Form of Global Bond dated as of December 10, 1993 (the “1993 Form”); and (iv) the Fiscal Agency Agreement dated October 19, 1994 (the “1994 FAA”).¹

The Court has previously granted summary judgment to holders of bonds governed by the FRB Agreement and FRB Form, the 1993 FAA and 1993 Form, and the 1994 FAA in *Etevob v. Republic of Argentina*, 471 F. Supp. 2d 432, 433-34 (S.D.N.Y. 2007). See also *Lightwater Corp. Ltd. v. Republic of Argentina*, No. 02 Civ. 3804, 2003 WL 1878420 (S.D.N.Y. Apr. 14, 2003) (granting summary judgment on bonds issued under the 1994 FAA). Sections 16(b) and (c) of the Par Bonds FAA, section 6.07 of the FRB Agreements and section 17 of the FRB Form, section 20 of the 1993 FAA, and section 22 of the 1994 FAA each provide that the Republic waives sovereign immunity and consents to jurisdiction in any state or federal court in the borough of Manhattan in the City of New York. Each of those agreements provides that the

1. Plaintiffs also hold rights with respect to certain bonds issued by the Republic pursuant to the Trust Deed dated as of July 27, 1993, with the accompanying Terms and Conditions of Notes dated as of July 27, 1993 (the “Eurobonds”). Plaintiff’s claims with respect to the Eurobonds, however, are not included in the present motion for summary judgment because, at the time Plaintiffs moved for summary judgment on the remaining bonds, the Eurobonds were subject to a motion to dismiss filed by the Republic. The Court has since denied that motion. *Capital Markets Fin. Servs., Inc. v. Republic of Argentina*, No. 06 Civ. 15301 (S.D.N.Y. March 13, 2008). Plaintiffs have reserved their rights to move for summary judgment or proceed to trial with respect to the Eurobonds at a later time.

Republic's obligations on the bonds are unconditional and that failure to make any payment of principal or interest for thirty days after the applicable payment date constitutes an event of default. A declaration by the Republic of a moratorium on the payment of principal or interest on its public external indebtedness is an event of default as well. The 1993 Form and paragraph 12 of the 1994 FAA provide for acceleration of principal if there is a failure to pay interest or a moratorium. If either of these events occurs, "each holder of Securities of such Series may by such notice in writing declare the principal amount of Securities of such Series held by it to be due and payable immediately . . ." Condition 10 of the Par Bonds Form permits acceleration of principal by holders of at least 25% in aggregate of the outstanding principal amount of the bonds under that agreement.

On December 24, 2001 the Republic declared a moratorium on payments of principal and interest on the external debt of the Republic. The court refers to its previous opinions for a description of the circumstances of these defaults. *Lightwater*, 2003 WL 1878420, at *2; *Applestein v. Republic of Argentina*, No. 02 Civ. 1773, 2003 WL 1990206, at *1 (S.D.N.Y. Apr. 29, 2003). On December 18, 2006, Plaintiffs sent the Fiscal Agent of the Republic a notice of acceleration of all principal and accrued interest due on the debt securities held by the Plaintiffs and governed by the Par Bonds FAA, the 1993 FAA and the 1994 FAA. By notice dated February 2, 2007, the Fiscal Agent of the Republic advised that the holders of more than 25% of the principal amount outstanding of each of the Par Bonds and the Discount bonds had declared the bonds immediately due and payable.

The bonds that are the subject of this action are listed hereafter. Also listed are

the amounts of the beneficial interests owned by the Plaintiffs.²

The following tables contain the necessary identifying information regarding the plaintiffs' beneficial interests in bonds.

Table 1

<u>Plaintiff Bond Holders or Beneficial Owners:</u>	Clarex Limited
<u>Face Value:</u>	\$14,500,000.00
<u>CUSIP No.:</u>	040114BE9
<u>ISIN No.:</u>	US040114BE93
<u>Date of Issuance:</u>	April 7, 1999
<u>Date of Maturity:</u>	April 7, 2009
<u>Interest Rate/Payable:</u>	11.75%
<u>Date of Acquisition:</u>	Not Provided
<u>Acceleration:</u>	December 18, 2006
<u>Contract Documents</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.):	1994 FAA
<u>Evidence of Ownership Proffered</u> (Account Statements; Letters; Notarized Statements, etc.):	Letter from The Bank of Nova Scotia Trust Company (Bahamas) Limited ("Scotia Trust"), dated August 29, 2008, and enclosed schedules and portfolio valuation.

2. The Court notes the distinction between bonds and beneficial interests. In some previous opinions, the Court has simply referred to the plaintiffs as owners of "bonds," when in fact plaintiffs are technically owners of "beneficial interests in bonds." The Republic actually issues "a bond" to a depository. The depository, in some form, issues "participations" to brokers, who sell "beneficial interests" to purchasers. These beneficial interests are identified by reference to the underlying bond (CUSIP or ISIN number or both; date of issuance and maturity; rate of interest) and the principal amount of the beneficial interest. This distinction is discussed more fully in *Million Air Corp. v. Republic of Argentina*, No. 04 Civ. 1048, 2005 WL 256126 (S.D.N.Y. Oct. 17, 2005).

Table 2

<u>Plaintiff Bond Holders or Beneficial Owners:</u>	Clarex Limited
<u>Face Value:</u>	\$22,000,000.00
<u>CUSIP No.:</u>	040114GD6
<u>ISIN No.:</u>	US040114GD65
<u>Date of Issuance:</u>	February 21, 2001
<u>Date of Maturity:</u>	February 21, 2012
<u>Interest Rate/Payable:</u>	12.375%
<u>Date of Acquisition:</u>	Not Provided
<u>Acceleration:</u>	December 18, 2006
<u>Contract Documents</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.):	1994 FAA
<u>Evidence of Ownership Proffered</u> (Account Statements; Letters; Notarized Statements, etc.):	Letter from Scotia Trust, dated August 29, 2008, and enclosed schedules and portfolio valuation.

Table 3

<u>Plaintiff Bond Holders or Beneficial Owners:</u>	Clarex Limited
<u>Face Value:</u>	\$5,000,000.00
<u>CUSIP No.:</u>	040114GA2
<u>ISIN No.:</u>	US040114GA27
<u>Date of Issuance:</u>	June 15, 2000
<u>Date of Maturity:</u>	June 15, 2015
<u>Interest Rate/Payable:</u>	11.75%
<u>Date of Acquisition:</u>	Not Provided
<u>Acceleration:</u>	December 18, 2006

<u>Contract Documents</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.):	1994 FAA
<u>Evidence of Ownership Proffered</u> (Account Statements; Letters; Notarized Statements, etc.):	Letter from Scotia Trust, dated August 29, 2008, and enclosed schedules and portfolio valuation.

Table 4

<u>Plaintiff Bond Holders or Beneficial Owners:</u>	Clarex Limited
<u>Face Value:</u>	\$1,000,000.00
<u>CUSIP No.:</u>	040114AR1
<u>ISIN No.:</u>	US040114AR16
<u>Date of Issuance:</u>	January 30, 1997
<u>Date of Maturity:</u>	January 30, 2017
<u>Interest Rate/Payable:</u>	11.375%
<u>Date of Acquisition:</u>	Not Provided
<u>Acceleration:</u>	December 18, 2006
<u>Contract Documents</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.):	1994 FAA
<u>Evidence of Ownership Proffered</u> (Account Statements; Letters; Notarized Statements, etc.):	Letter from Scotia Trust, dated August 29, 2008, and enclosed schedules and portfolio valuation.

Table 5

<u>Plaintiff Bond Holders or Beneficial Owners:</u>	Clarex Limited
<u>Face Value:</u>	\$10,000,000.00
<u>CUSIP No.:</u>	040114GG9
<u>ISIN No.:</u>	US040114GG96
<u>Date of Issuance:</u>	June 19, 2001

<u>Date of Maturity:</u>	June 19, 2018
<u>Interest Rate/Payable:</u>	12.25%
<u>Date of Acquisition:</u>	Not Provided
<u>Acceleration:</u>	December 18, 2006
<u>Contract Documents</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.):	1994 FAA
<u>Evidence of Ownership Proffered</u> (Account Statements; Letters; Notarized Statements, etc.):	Letter from Scotia Trust, dated August 29, 2008, and enclosed schedules and portfolio valuation.

Table 6

<u>Plaintiff Bond Holders or Beneficial Owners:</u>	Clarex Limited
<u>Face Value:</u>	\$5,444,000.00
<u>CUSIP No.:</u>	040114BC3
<u>ISIN No.:</u>	US040114BC38
<u>Date of Issuance:</u>	February 25, 1999
<u>Date of Maturity:</u>	February 25, 2019
<u>Interest Rate/Payable:</u>	12.125%
<u>Date of Acquisition:</u>	Not Provided
<u>Acceleration:</u>	December 18, 2006
<u>Contract Documents</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.):	1994 FAA
<u>Evidence of Ownership Proffered</u> (Account Statements; Letters; Notarized Statements, etc.):	Letter from Scotia Trust, dated August 29, 2008, and enclosed schedules and portfolio valuation.

Table 7

<u>Plaintiff Bond Holders or Beneficial Owners:</u>	Clarex Limited
<u>Face Value:</u>	\$1,000,000.00
<u>CUSIP No.:</u>	040114FB1
<u>ISIN No.:</u>	US040114FB19
<u>Date of Issuance:</u>	February 3, 2000
<u>Date of Maturity:</u>	February 1, 2020
<u>Interest Rate/Payable:</u>	12%
<u>Date of Acquisition:</u>	Not Provided
<u>Acceleration:</u>	December 18, 2006
<u>Contract Documents</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.):	1994 FAA
<u>Evidence of Ownership Proffered</u> (Account Statements; Letters; Notarized Statements, etc.):	Letter from Scotia Trust, dated August 29, 2008, and enclosed schedules and portfolio valuation.

Table 8

<u>Plaintiff Bond Holders or Beneficial Owners:</u>	Clarex Limited
<u>Face Value:</u>	\$1,400,000.00
<u>CUSIP No.:</u>	040114AV2
<u>ISIN No.:</u>	US040114AV28
<u>Date of Issuance:</u>	September 19, 1997
<u>Date of Maturity:</u>	September 19, 2027
<u>Interest Rate/Payable:</u>	9.75%
<u>Date of Acquisition:</u>	Not Provided
<u>Acceleration:</u>	December 18, 2006

<u>Contract Documents</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.):	1994 FAA
<u>Evidence of Ownership Proffered</u> (Account Statements; Letters; Notarized Statements, etc.):	Letter from Scotia Trust, dated August 29, 2008, and enclosed schedules and portfolio valuation.

Table 9

<u>Plaintiff Bond Holders or Beneficial Owners:</u>	Clarex Limited
<u>Face Value:</u>	\$5,000,000.00
<u>CUSIP No.:</u>	040114GH7
<u>ISIN No.:</u>	US040114GH79
<u>Date of Issuance:</u>	June 19, 2001
<u>Date of Maturity:</u>	June 19, 2031
<u>Interest Rate/Payable:</u>	12%
<u>Date of Acquisition:</u>	Not Provided
<u>Acceleration:</u>	December 18, 2006
<u>Contract Documents</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.):	1994 FAA
<u>Evidence of Ownership Proffered</u> (Account Statements; Letters; Notarized Statements, etc.):	Letter from Scotia Trust, dated August 29, 2008, and enclosed schedules and portfolio valuation.

Table 10

<u>Plaintiff Bond Holders or Beneficial Owners:</u>	Fiscella Holdings Limited
<u>Face Value:</u>	\$5,000,000.00
<u>CUSIP No.:</u>	P04981BN8
<u>ISIN No.:</u>	XS0043119147
<u>Date of Issuance:</u>	March 31, 1993

<u>Date of Maturity:</u>	March 31, 2023
<u>Interest Rate/Payable:</u>	6%
<u>Date of Acquisition:</u>	Not Provided
<u>Acceleration:</u>	February 2, 2007
<u>Contract Documents</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.):	Par Bonds FAA and Par Bonds Form
<u>Evidence of Ownership Proffered</u> (Account Statements; Letters; Notarized Statements, etc.):	Letter from Scotia Trust, dated August 29, 2008, and enclosed schedules and portfolio valuation.

Table 11

<u>Plaintiff Bond Holders or Beneficial Owners:</u>	Fiscella Holdings Limited
<u>Face Value:</u>	\$21,720,000.00
<u>CUSIP No.:</u>	P04981CE7
<u>ISIN No.:</u>	XS0043120236
<u>Date of Issuance:</u>	March 31, 1993
<u>Date of Maturity:</u>	March 29, 2005
<u>Interest Rate/Payable:</u>	LIBOR + 0.8125
<u>Date of Acquisition:</u>	Not Provided
<u>Acceleration:</u>	Not Provided
<u>Contract Documents</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.):	FRB Agreement and FRB Form
<u>Evidence of Ownership Proffered</u> (Account Statements; Letters; Notarized Statements, etc.):	Letter from Scotia Trust, dated August 29, 2008, and enclosed schedules and portfolio valuation.

Table 12

<u>Plaintiff Bond Holders or Beneficial Owners:</u>	Fiscella Holdings Limited
<u>Face Value:</u>	\$3,913,000.00
<u>CUSIP No.:</u>	P04981CF4
<u>ISIN No.:</u>	XS0043120582
<u>Date of Issuance:</u>	March 31, 1993
<u>Date of Maturity:</u>	March 29, 2005
<u>Interest Rate/Payable:</u>	LIBOR + 0.8125
<u>Date of Acquisition:</u>	Not Provided
<u>Acceleration:</u>	Not Provided
<u>Contract Documents</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.):	FRB Agreement and FRB Form
<u>Evidence of Ownership Proffered</u> (Account Statements; Letters; Notarized Statements, etc.):	Letter from Scotia Trust, dated August 29, 2008, and enclosed schedules and portfolio valuation.

Table 13

<u>Plaintiff Bond Holders or Beneficial Owners:</u>	Fiscella Holdings Limited
<u>Face Value:</u>	\$1,900,000.00
<u>CUSIP No.:</u>	040114AH3
<u>ISIN No.:</u>	US040114AH34
<u>Date of Issuance:</u>	December 20, 1993
<u>Date of Maturity:</u>	December 20, 2003
<u>Interest Rate/Payable:</u>	8.375%
<u>Date of Acquisition:</u>	Not Provided
<u>Acceleration:</u>	December 18, 2006

<u>Contract Documents</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.):	1993 FAA and 1993 Form
<u>Evidence of Ownership Proffered</u> (Account Statements; Letters; Notarized Statements, etc.):	Letter from Scotia Trust, dated August 29, 2008, and enclosed schedules and portfolio valuation.

Table 14

<u>Plaintiff Bond Holders or Beneficial Owners:</u>	Fiscella Holdings Limited
<u>Face Value:</u>	\$2,000,000.00
<u>CUSIP No.:</u>	040114BE9
<u>ISIN No.:</u>	US040114BE93
<u>Date of Issuance:</u>	April 7, 1999
<u>Date of Maturity:</u>	April 7, 2009
<u>Interest Rate/Payable:</u>	11.75%
<u>Date of Acquisition:</u>	Not Provided
<u>Acceleration:</u>	December 18, 2006
<u>Contract Documents</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.):	1994 FAA
<u>Evidence of Ownership Proffered</u> (Account Statements; Letters; Notarized Statements, etc.):	Letter from Scotia Trust, dated August 29, 2008, and enclosed schedules and portfolio valuation.

Table 15

<u>Plaintiff Bond Holders or Beneficial Owners:</u>	Fiscella Holdings Limited
<u>Face Value:</u>	\$88,220,000.00
<u>CUSIP No.:</u>	040114GH7
<u>ISIN No.:</u>	US040114GH79
<u>Date of Issuance:</u>	June 19, 2001

<u>Date of Maturity:</u>	June 19, 2031
<u>Interest Rate/Payable:</u>	12%
<u>Date of Acquisition:</u>	Not Provided
<u>Acceleration:</u>	December 18, 2006
<u>Contract Documents</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.):	1994 FAA
<u>Evidence of Ownership Proffered</u> (Account Statements; Letters; Notarized Statements, etc.):	Letter from Scotia Trust, dated August 29, 2008, and enclosed schedules and portfolio valuation.

DISCUSSION

This Court has already granted summary judgment in other cases to plaintiffs seeking to collect on the Republic's defaulted bonds issued under the Par Bonds FAA, the FRB Agreement, the 1993 FAA and the 1994 FAA. This has occurred in *Lightwater, supra, BNP Paribas v. Republic of Argentina*, No. 06 Civ. 14339, 2007 WL 4480049 (S.D.N.Y. Dec. 21, 2007); *Mazzini v. Republic of Argentina*, No. 03 Civ. 8120, 2005 WL 743090 (S.D.N.Y. Mar. 31, 2005), and other cases. Only certain specific issues need to be discussed in connection with the present motion.

Standing and Proof of Ownership

In the two opinions in *Fontana v. Republic of Argentina*, 415 F.3d 238 (2d Cir. 2005), and *Applestein v. Province of Buenos Aires*, 415 F.3d 242 (2d Cir. 2005), the Second Circuit has held that an owner of a beneficial interest, such as the Plaintiffs here, must receive authorization from the registered holder of the bond before it may sue, but that such authorization may be granted subsequent to the filing of a lawsuit. Alternatively, the Republic may waive the authorization requirement.

The Republic has agreed to waive objections based on lack of authorization where the court makes a finding of current ownership. *See Transcript, March 28, 2006, Cilli v. Republic of Argentina (04 Civ. 6594).*

Here, Plaintiffs have adequately demonstrated through the letter and portfolio valuations from Scotia Trust that they owned their beneficial interests in the bonds having ISIN XS0043119147, XS0043120236, XS0043120582, US040114AH34, US040114BE93, US040114GH79, US040114GD65, US040114GA27, US040114AR16, US040114GG96, US040114BC38, US040114FB19 and US040114AV28, as of August 29, 2008. There is no evidence of any change of ownership thereafter.

CONCLUSION

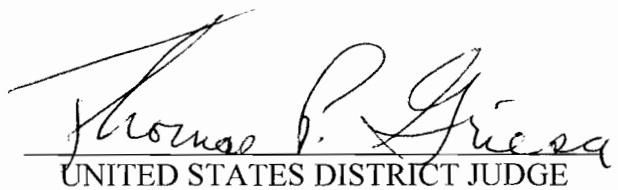
The motion for summary judgment is granted. Judgment will be entered for the principal amount of the bonds issued under the Par Bonds FAA, the FRB Agreement, the 1993 FAA and the 1994 FAA, plus accrued interest.

The parties shall consult with one another concerning the form of the judgment and the amounts of interest that should be awarded in the judgment. If the parties are able to reach agreement, they shall jointly submit an agreed proposed judgment to the Court to be entered on a date agreed to by the parties upon consultation with Chambers. If the parties are unable to reach agreement on those subjects, Plaintiffs shall submit a proposed judgment to the Court, and the Republic shall submit any objections to the proposed judgment within five business days thereafter. The Court will then resolve any remaining disagreements. Proposed judgments submitted to the Court should include the following language: "It is further ORDERED that, until further notice from the Court, plaintiff(s) must refrain from selling or otherwise transferring its beneficial interest in the bond(s) involved in this action without

advising the Court in advance and obtaining permission of the Court."

SO ORDERED.

Dated: New York, New York
December 23, 2008



Thomas P. Griesa
UNITED STATES DISTRICT JUDGE